



[Billing Code 3290-F0]

## **OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

### **Notice of Product Exclusion Extensions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** Effective July 6, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately \$34 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated an exclusion process in July 2018 and has granted 10 sets of exclusions under the \$34 billion action. He published the eighth set of exclusions in October 2019 and additional exclusions in December 2019 and February 2020. These exclusions will expire on October 2, 2020. On August 3, 2020, the U.S. Trade Representative established a process for the public to comment on whether to extend particular exclusions for up to 12 months. This notice announces the U.S. Trade Representative's determination to extend certain exclusions through December 31, 2020.

**DATES:** The product exclusion extensions announced in this notice apply as of October 2, 2020, and extend through December 31, 2020. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

**FOR FURTHER INFORMATION CONTACT:** For general questions about this notice, contact Associate General Counsel Philip Butler or Assistant General Counsel Benjamin Allen, or Director of Industrial Goods Justin Hoffmann at (202) 395-5725. For

specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact [traderemedym@cbp.dhs.gov](mailto:traderemedym@cbp.dhs.gov).

## **SUPPLEMENTARY INFORMATION:**

### **A. Background**

For background on the proceedings in this investigation, please see prior notices including: 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 32181 (July 11, 2018), 83 FR 67463 (December 28, 2018), 84 FR 11152 (March 25, 2019), 84 FR 16310 (April 18, 2019), 84 FR 21389 (May 14, 2019), 84 FR 25895 (June 4, 2019), 84 FR 32821 (July 9, 2019), 84 FR 43304 (August 20, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49564 (September 20, 2019), 84 FR 52567 (October 2, 2019), 84 FR 58427 (October 31, 2019), 84 FR 70616 (December 23, 2019), 84 FR 72102 (December 30, 2019), 85 FR 6687 (February 5, 2020), 85 FR 12373 (March 2, 2020), 85 FR 16181 (March 20, 2020), 85 FR 24081 (April 30, 2020), 85 FR 33775 (June 2, 2020), 85 FR 34274 (June 3, 2020), 85 FR 41267 (July 9, 2020), 85 FR 46777 (August 3, 2020), and 85 FR 59587 (September 22, 2020).

Effective July 6, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 818 eight-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of \$34 billion. *See* 83 FR 28710 (the \$34 billion action). The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders could request exclusion of particular products classified within an eight-digit HTSUS subheading covered by the \$34 billion action from the additional duties. The

U.S. Trade Representative issued a notice setting out the process for product exclusions and opened a public docket. *See* 83 FR 32181 (July 11 notice).

In October and December 2019 and February 2020, the U.S. Trade Representative granted exclusion requests. *See* 84 FR 52567 (October 2 notice), 84 FR 69016 (December 17 notice), and 85 FR 7816 (February 11 notice). The exclusions granted under these notices expire on October 2, 2020. On August 3, 2020, the U.S. Trade Representative invited the public to comment on whether to extend for up to 12 months particular exclusions granted under these notices. *See* 85 FR 46777 (August 3 notice).

Under the August 3 notice, commenters were asked to address whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries; any changes in the global supply chain since July 2018 with respect to the particular product, or any other relevant industry developments; and efforts, if any, importers or U.S. purchasers have undertaken since July 2018 to source the product from the United States or third countries.

In addition, commenters who were importers and/or purchasers of the products covered by an exclusion were asked to provide information regarding their efforts since July 2018 to source the product from the United States or third countries; the value and quantity of the Chinese-origin product covered by the specific exclusion request purchased in 2018 and 2019, and whether these purchases are from a related company; whether Chinese suppliers have lowered their prices for products covered by the exclusion following the imposition of duties; the value and quantity of the product covered by the exclusion purchased from domestic and third country sources in 2018 and 2019; the commenter's gross revenue for 2018 and 2019; whether the Chinese-origin

product of concern is sold as a final product or as an input; whether the imposition of duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests; and any additional information in support or in opposition of the extending the exclusion.

The August 3 notice required the submission of comments no later than August 30, 2020.

#### **B. Determination to Extend Certain Exclusions**

Based on an evaluation of the factors set out in the July 11 and August 3 notices, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to extend certain product exclusions covered by the October 2, December 17, and February 11 notices, as set out in the Annexes to this notice.

The August 3 notice said the U.S. Trade Representative would consider extensions of up to 12 months. In light of the cumulative effect of current and possible future exclusions or extensions of exclusions on the effectiveness of the action taken in this investigation, the U.S. Trade Representative has determined to extend the exclusions in the Annexes to this notice for less than 12 months - through December 31, 2020. To date, the U.S. Trade Representative has granted more than 6,800 exclusion requests, has extended some of these exclusions, and may consider further extensions of exclusions. The U.S. Trade Representative will take account of the cumulative effect of exclusions in considering the possible further extension of the exclusions covered by this notice, as well as possible extensions of exclusions of other products covered by the action in this

investigation. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments concerning extension of the pertinent exclusion.

In accordance with the July 11 notice, the exclusions are available for any product that meets the description in the Annexes, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the ten-digit HTSUS headings and product descriptions in the Annexes to this notice, and not by the product descriptions set out in any particular request for exclusion.

**Joseph Barloon,**

*General Counsel,*

*Office of the United States Trade Representative.*

## ANNEX A

- A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on October 2, 2020 and before 11:59 p.m. eastern daylight time on December 31, 2020, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:
1. by inserting the following new heading 9903.88.60 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, and “Rates of Duty 1-General”, respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
“9903.88.60	Effective with respect to entries on or after October 2, 2020, and through December 31, 2020, articles the product of China, as provided for in U.S. note 20(mmm) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative . . . . . .....	The duty provided in the applicable subheading”		

2. by inserting the following new U.S. note 20(mmm) to subchapter III of chapter 99 in numerical sequence:

“(mmm) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.01 and provided for in U.S. notes 20(a) and 20(b) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.01. See 83 Fed. Reg. 40823 (August 16, 2018) and 83 Fed. Reg. 47326 (September 18, 2018). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that, as provided in heading 9903.88.60, the additional duties provided for in heading 9903.88.01 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

- (1) 9030.90.4600
- (2) Chemically etched dies of steel, steel-rule cutting dies, movable magnetic dies, embossing folders and plastic embossing diffusers, of a kind used in manually-powered roller machines for etching or stenciling a single sheet of cardstock, paper, leather, flexible magnet, plastics, metallic foil, vellum, felt or fabric, such sheets measuring not more than 50.8 cm in width or length (described in statistical reporting number 8420.99.9000)
- (3) Operator riding self-propelled aerial work platforms of a kind described in statistical note 1 to chapter 84 effective July 1, 2019, to December 31, 2019, or in statistical

- note 2 to chapter 84 effective January 1, 2020, powered by an electric motor, with a load capacity not exceeding 1,400 kg (described in statistical reporting number 8427.10.8010 prior to July 1, 2019; described in statistical reporting number 8427.10.8020 effective July 1, 2019)
- (4) Cement retainer assemblies with diameter of 4.5 cm or more but not exceeding 51 cm and length of 30.5 cm or more but not exceeding 72 cm, composed of cylindrical cast iron components, nitrile rubber seal and brass back-up rings, suitable for use solely or principally with the machinery of subheadings 8430.41 or 8430.49 (described in statistical reporting number 8431.43.8060)
  - (5) Extrusion machines for processing rubber, twin-screw type, designed to produce inner liners for tires (described in statistical reporting number 8477.20.0015)
  - (6) Safety valves, of brass or bronze, containing a fusible element to automatically close the valve at a set temperature, each valued not over \$5 (described in statistical reporting number 8481.40.0000)
  - (7) DC electric motors, of an output of less than 18.65 W, other than brushless, measuring less than 38 mm in diameter (described in statistical reporting number 8501.10.4060)
  - (8) DC motors, electronically commutated, three-phase, eight-pole of a kind used in HVAC systems, of an output of 750 W, valued not over \$100 each (described in statistical reporting number 8501.31.6000)
  - (9) Combined positron emission tomography/computed tomography (PET/CT) scanners which utilize multiple PET gantries (frames) on a common base (described in statistical reporting number 9022.12.0000)”
3. by amending the last sentence of the first paragraph of U.S. note 20(a) to subchapter III of chapter 99 by:
- a. by deleting “or (11)” and by inserting “(11)” in lieu thereof; and
  - b. by inserting “; or (12) heading 9903.88.60 and U.S. note 20(mmm) to subchapter III of chapter 99” after the phrase “U.S. note 20(kkk) to subchapter III of chapter 99”, where it appears at the end of the sentence.
4. by amending U.S. note 20(b) to subchapter III of chapter 99 by:
- a. by deleting “or (11)” and by inserting “(11)” in lieu thereof; and
  - b. by inserting “; or (12) heading 9903.88.60 and U.S. note 20(mmm) to subchapter III of chapter 99” after the phrase “U.S. note 20(kkk) to subchapter III of chapter 99”, where it appears at the end of the sentence.
5. by amending the Article Description of heading 9903.88.01:
- a. by deleting “9903.88.52 or”;

- b. by inserting in lieu thereof “9903.88.52,”; and
- c. by inserting “or 9903.88.60,” after “9903.88.58,”.

## ANNEX B

The following table is provided for informational purposes only. The table contains a list of the original product exclusions that are being extended by this notice. In addition, the table contains the corresponding subdivisions in new note 20(mmm) to subchapter III of Chapter 99 and new heading 9903.88.60 for the product exclusions that are being extended by this notice. The original product exclusions expire on October 2, 2020. The exclusions that are being extended are effective from October 2, 2020 through December 31, 2020.

Original Product Exclusions		Corresponding Extension of Product Exclusions	
Note 20 Subdivision	Chapter 99 Heading	Note 20 Subdivision	Chapter 99 Heading
20(x)(93)	9903.88.19	20(mmm)(1)	9903.88.60
20(x)(8)	9903.88.19	20(mmm)(2)	9903.88.60
20(x)(20)	9903.88.19	20(mmm)(3)	9903.88.60
20(x)(22)	9903.88.19	20(mmm)(4)	9903.88.60
20(x)(40)	9903.88.19	20(mmm)(5)	9903.88.60
20(x)(43)	9903.88.19	20(mmm)(6)	9903.88.60
20(x)(46)	9903.88.19	20(mmm)(7)	9903.88.60
20(x)(50)	9903.88.19	20(mmm)(8)	9903.88.60
20(x)(89)	9903.88.19	20(mmm)(9)	9903.88.60